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Manabu Sutoh

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27305

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EXAMINER

CHANG, VICTOR S

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

06/08/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Art Unit: 1794

**NOTE:**

Applicants argue at Remarks page 6:

“MPEP 2129 is very clear that “[a] statement by an applicant >in the specification or made during prosecution identifying the work of another as “prior art” is an admission \*\*>which can be relied upon for both anticipation and obviousness determinations.” (Emphasis original). Clearly, when the Applicants' statements **do not** identify work of another, other conditions apply. In particular, as also set forth in MPEP 2129, even if labeled as “prior art,” the work of the same inventive entity may not be considered prior art against the claims unless it falls under one of the statutory categories.”

However, applicants have failed to provide any evidentiary support that the APA is not the work by another. The examiner asserts that it is *prima facie* proper to use APA as basis of rejection, as indicated by MPEP. Applicants may wish to submit an affidavit along with evidentiary support for the purpose to overcome the rejection based on APA.